

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHRISTOPHER E. BROWN	:	
an individual,	:	
	:	Civ. No. 07-cv-3723 (RJH)
Plaintiff,	:	
	:	
vs.	:	ANSWER
	:	
PAX VENTURES, LLC	:	
a New York Limited Liability Company,	:	
	:	
Defendant.	:	
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Defendant, PAX VENTURES, LLC (hereinafter “Defendant”), by its attorneys, Kossoff & Unger, responding to the allegations of the Plaintiffs in the Complaint, answers as follows:

JURISDICTION AND PARTIES

1. Paragraph “1” of the Complaint contains Plaintiff’s characterization of the action legal conclusions, and accordingly, requires no response. To the extent a response may be required, Defendant, denies the truth of the allegations set forth in paragraph “1” of the Complaint.

2. Paragraph “2” of the Complaint contains legal conclusions by the Plaintiff, and accordingly, requires no response. To the extent a response may be required, Defendant denies having any knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “2” of the Complaint.

3. Defendant denies having any knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs “3”, “4”, “5” and “7” of the Complaint.

4. Defendant admits the truth of the allegations set forth in paragraph “6” of the Complaint to the extent it alleges that Defendant is registered to do business in the State of New York. Defendant denies the truth of the allegations set forth in paragraph “6” of the Complaint to the extent that it is the owner, lessee, and/or operator of the entire portions of the Properties as alleged by Plaintiff.

**COUNT I – VIOLATION OF TITLE III OF THE
AMERICANS WITH DISABILITIES ACT**

5. Defendant responds to the allegations contained in paragraph “8” of the Complaint as set forth elsewhere herein.

6. Defendant denies having any knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs “9”, “10”, “11”, “12”, “13”, and “17” of the Complaint.

7. Defendant denies the truth of the allegations set forth in paragraphs “14” and “16” of the Complaint.

8. Defendant denies the truth of the allegation set forth in the first sentence of paragraph “15” of the Complaint. The second sentence of paragraph “15” contains a request for relief not an allegation, and accordingly, requires no response. To the extent a response may be required, Defendant, denies the truth of the allegations set forth in the second sentence of paragraph “15” of the Complaint.

9. Defendant denies having any knowledge or information sufficient to form a belief as to the truth of the allegation set forth in the first sentence of paragraph “18” of the Complaint. Defendant denied the truth of the allegation set forth in the second sentence of paragraph “18” of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

10. The Complaint fails to state a claim upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

11. Plaintiff lacks standing to maintain the instant action.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

12. Plaintiffs have failed to exhaust their administrative remedies prior to commencing the instant litigation.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

13. The Court lacks personal jurisdiction over Defendant as Plaintiff failed to serve a Summons with the Complaint.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

14. Plaintiff failed to provide notice to Defendant of any alleged violation of the Americans with Disabilities Act, therefore, Plaintiff is not entitled to the relief sought in the Complaint and/or attorneys fees.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

15. The alterations, modifications, and/or structural changes Plaintiff seeks are not readily achievable, technically infeasible, not required as a matter of law, would fundamentally alter the manner in which Defendant provides goods and services, and creates an undo burden upon Defendant.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

16. The alterations, modifications, and/or structural changes Plaintiff seeks would create a threat to the health and safety of Plaintiff and others.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

17. Without admitting any liability, Defendant has already instituted appropriate barrier removal plans and eliminated existing barriers to the extent technically feasible, therefore, the Complaint is moot.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

18. Plaintiff failed to properly describe the property and/or place of occurrence of the alleged violation of the American with Disabilities Act.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

19. Plaintiff failed to join necessary parties to this Action, namely, the owners of the Properties.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

20. Any alleged violation of the Americans with Disabilities Act were the result of the actions of parties over which DEFENDANT has no relationship or control.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

21. Defendant is without authority and/or capacity to make modifications and/or alterations to the Properties without the express consent of the various owners of the Properties.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

22. Plaintiffs do not have a basis for injunctive relief.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

23. The alterations, modifications, and/or structural changes Plaintiff seeks are subject to and limited by applicable local, state and/or other laws, and as such, they may not be able to be performed, assuming they are required.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

24. Any alleged condition of those portions of the Properties occupied by Defendant for which Plaintiff claims is a violation of the American with Disabilities Act are exempt under any and all applicable laws.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
UPON INFORMATION AND BELIEF:**

25. Any nonconforming use of those portions of the Properties occupied by Defendant under the Americans with Disabilities Act are exempt due to being existing conditions prior to the enactment of the Americans with Disabilities Act and are not covered by the Americans with Disabilities Act.

AS AND FOR A COUNTERCLAIM:

26. In the event the Complaint is dismissed, Defendant is entitled to have its reasonable attorneys fees, costs and expenses paid by Plaintiff pursuant to 28 U.S.C. §1927 and 42 U.S.C. §12205.

WHEREFORE, DEFENDANT, respectfully requests a judgment from this Court dismissing the Plaintiff's complaint in its entirety, and an award to DEFENDANT of its reasonable attorneys' fees, cost and disbursements incurred in connection with the instant action.

Dated: July 5, 2007
New York, New York

KOSSOFF & UNGER

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